

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Vermont Health access (the "State") and Burns and Associates, Inc., with a principal place of business in Phoenix, Arizona (the "Contractor") that the contract between them originally dated as of July 1, 2018, Contract # 36456, (the "Contract") is hereby amended as follows:

- I. **Maximum Amount.** The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$1,347,560.00 to \$2,016,560.00, representing an increase of \$669,000.00.
- II. **Contract Term.** The Contract end date, wherever such reference appears in the Contract, shall be changed from June 30, 2020 to June 30, 2021. The Contract Term may be renewed for one additional year period by mutual agreement between the Parties.

**Attachment A. Scope of Services.** Attachment A is hereby deleted in its entirety and replaced as set forth below.

The Scope of Services provides for a series of deliverables. Time is of the essence in the submission of the deliverables to the State to ensure compliance with Federal guidance and mandates. Through a Service Level Agreement (SLA) in Attachment B of this Contract, credits may be due to the State should Contractor fail to submit a deliverable in a timely manner. These credits reflect the reduced value of services to the State against the deliverables set out in this Attachment A.

1. **Medicaid Rate Setting and Fee Schedules.** Contractor shall provide analytic support and reimbursement subject matter expertise to the State in rate setting and shall deliver rates, fee schedules, and related documents to the State in preparation for Vermont's Medicaid's annual update changes that are effective January 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> or other date as specified by the State. Contractor will provide these rates, fee schedules, fiscal impact and related documents to the State at least six (6) weeks prior to the applicable Vermont annual effective date.
  - a. **Inpatient Prospective Payment System (IPPS)**
    - i. Contractor shall provide payment modeling and rate setting related to the Vermont Medicaid IPPS: collect and analyze claims information, model payment scenarios, and advise the State of updates or changes resulting from Medicare's IPPS Final Rule.
    - ii. Contractor shall provide analytic support and reimbursement subject matter expertise to the State in updating the hospital-specific cost-to-charge ratios (CCRs), inpatient fixed outlier threshold, outlier payment percentage, inpatient base rates, inpatient psych base rate and additive factors, as well as identify Diagnosis Related Grouper additions or deletions.
    - iii. All inpatient rates, updates, fiscal impact, and related documents are due to the state at least six (6) weeks prior to Vermont's annual effective date of October 1<sup>st</sup> or other date as specified by the State.
  - b. **Outpatient Prospective Payment System (OPPS)**
    - i. Contractor shall provide payment modeling and rate setting related to the Vermont Medicaid OPPS: collect and analyze claims information, model payment scenarios, and advise the State of any updates or changes resulting from Medicare's OPPS Final Rule.
    - ii. Contractor shall provide analytic support and reimbursement subject matter expertise to the State in updating the status indicators, Ambulatory Payment Classifications, packaged revenue code list, composite pricing methodology, outpatient fixed outlier threshold,

- outpatient outlier payment percentages, and the hospital standard discount and adjusters.
  - iii. Contractor shall supply the State with a memorandum summarizing all updates and changes made to the OPPS methodology.
  - iv. All OPPS rates, updates, fiscal impact and related documents are due to the state at least six (6) weeks prior to Vermont's annual effective date of July 1<sup>st</sup> or other date as specified by the State.
- c. Resource Based Relative Value Scale (RBRVS)
- i. Contractor shall be responsible for payment modeling and rate setting related to the Vermont Medicaid RBRVS. This includes but is not limited to: collecting and analyzing claims information, modeling payment scenarios, and advising the State of any updates or changes resulting from Medicare's RBRVS Final Rule. Contractor shall provide analytic support and reimbursement subject matter expertise to the State in updating Relative Value Unit (RVU), Geographic Practice Cost Index (GPCI), conversion factor, and newly valued codes. All RBRVS rates, updates, fiscal impact and related documents are due to the state at least six (6) weeks prior to Vermont's annual effective date of July 1<sup>st</sup> or other date as specified by the State.
- d. Full Diagnosis Related Grouper (DRG) Rebase
- i. Contractor shall be responsible for a full DRG rebase at least once every four years. At a minimum, Contractor shall review the following elements; base rates, per diem rates, DRG relative weights, Medicare DRG grouper version, hospital-specific CCRs, psych additive factors, add-on amounts, outlier payment percentages, fixed outlier values, and various payment policies including, but not limited to; transfer, short stay, and waiting placement.
- e. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)
- i. Contractor shall be responsible for payment modeling and rate setting related to the Vermont Medicaid DMEPOS. This includes but is not limited to: collecting and analyzing claims information across all classes, modeling payment scenarios for all classes, and advising the State of any updates or changes resulting from Medicare's DMEPOS Final Rule. All DMEPOS rates, updates, fiscal impact and related documents are due to the state at least six (6) weeks prior to Vermont's annual effective date of January 1<sup>st</sup> or other date as specified by the State.
2. Other Fee Schedules
- a. Contractor shall provide analytic support and subject matter expertise in payment modeling and rate setting of additional fee schedules as requested by the State including but not limited to, Clinical Laboratory and Physician Administered Drugs. Contractor will deliver rates, fee schedules, fiscal impacts and related documents at least six (6) weeks prior to the effective implementation date, or in certain circumstances, on another date as specified by the State.
3. Federally Qualified Health Center/Rural Health Center (FQHC/RHC) annual PPS and Change in Scope updates.
- a. Contractor shall provide analytic support and reimbursement subject matter expertise to the State in the January 1<sup>st</sup> annual update to the Vermont Medicaid PPS rate to include adjustment for MEI when requested by the State. Contractor shall also provide analytic support and reimbursement subject matter expertise to the State in review and analysis (through-out year) of

Change in Scope requests and any resulting adjustment to rates.

- b. The Contractor shall work with the State to amend and implement changes to current FQHC/RHC payment methodologies and/or policies as deemed necessary by the State.

4. Development and Implementation of Value-based Initiatives

- a. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State in the development and implementation of upcoming value-based initiatives. During the term of the Vermont All-Payer ACO Model agreement, the State shall evolve and expand ACO-based reform and develop payment reform projects that impact other Medicaid-covered services (including, but not limited to, mental health services, substance use disorder treatment services, and long-term services and supports) through partnerships between departments in the Agency of Human Services. The State will place emphasis on program evolution or development that ensures State compliance with the provisions of the Vermont All-Payer ACO Model related to achieving scale targets and on planning for the expansion of value-based payment arrangements to include providers and suppliers of additional Medicaid services beyond 2020. In support of these goals, the Contractor shall conduct research on national value-based initiatives, analyze claims information, and model payment scenarios representing options for the State's consideration and potential implementation. The Contractor shall meet with DVHA at least monthly, or more frequently if requested by the State, to discuss models, prepare for and attend meetings with providers and/or other stakeholders, and write draft and final methodologies for selected initiatives. For each model under consideration for implementation, drafts shall be delivered no later than July 15<sup>th</sup> of the year prior to the start of the Calendar Year for model implementation; the final methodologies shall be delivered no later than August 31<sup>st</sup> of the year prior to the start of the Calendar Year for implementation. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State in the drafting of public notice and answering related questions, and with State Plan Amendment submissions or "alternative payment model" prior approval submissions and responding to CMS questions no later than September 15<sup>th</sup> of the year prior to the start of the Calendar Year for model implementation.

The Contractor shall provide analytic support and reimbursement subject matter expertise to the State in the development and curation of a five-year plan for Medicaid value-based payments that integrates current ACO-based reforms (and future modifications to the existing model) with a strategy for converting more of Vermont Medicaid's payments to value-based models through integrated or complementary programs in future. The first draft of such a plan shall be submitted to the Commissioner of DVHA no later than December 31, 2018.

5. Disproportionate Share Hospital) Payments (DSH)

- a. The Contractor shall provide analytic support, reimbursement subject matter expertise and a general review of the annual DSH payment calculations prepared by the State.
- b. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State in any future changes to the program including payment calculations, policy changes or alternative reimbursement methodologies should the program be eliminated.

6. Graduate Medical Education (GME) Review

- a. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State with annual GME methodology review. The Contractor shall be responsible for analyzing

payment models and meeting with the State and UVM Medical Center regarding Intergovernmental Transfers (IGTs) and payment calculations.

7. Vermont Medicaid Next Generation (VMNG) ACO Program Data and Analytics Operations

- a. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State in the implementation and evaluation of the Vermont Medicaid Next Generation Accountable Care Organization (VMNG ACO) Program, a risk-based contractual arrangement between the Department of Vermont Health Access (DVHA) and an ACO in which the ACO is financially responsible for a defined population of Medicaid members and a defined set of Medicaid-covered services. The Contractor shall provide analytic support and technical expertise to aid in the evolving design, implementation and evaluation of this project, with specific tasks as outlined below.
  - i. The Contractor shall be responsible for performing prospective annual member attribution based on the ACOs' annual provider roster submission, and for modeling and advising on potential changes to the attribution methodology.
  - ii. The Contractor shall be responsible for provide analytic support and reimbursement subject matter expertise to DVHA in the development and performance of the annual VMNG financial reconciliation process, providing supporting analytics and collaboration in the drafting of the annual reconciliation reports.
  - iii. The Contractor shall be responsible for provide analytic support and reimbursement subject matter expertise to DVHA in the performance of ACO site visits to evaluate program implementation on an ongoing basis, including the development of site visit review questions and criteria, participation in preparatory meetings with DVHA staff, attending the site visits in-person, and collaboration in drafting the final site visit reports.

8. Budget Initiatives and Legislative Rate Changes

- a. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State with payment modeling and rate setting related to budget initiatives and legislative rate changes. This includes, but is not limited to, collecting and analyzing claims information, and modeling payment scenarios. The Contractor shall deliver rates, fee schedules, and related documents in a time period specified by the State.

9. Support Legislative Requests

- a. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State with requests put forth by the legislature. This may include, but is not limited to: answering questions, collecting and analyzing claims information, and related research.

10. Medicaid Policy, Budget and Reimbursement Process (PBR), State Plan Amendment and other Centers for Medicare & Medicaid Services (CMS) Negotiations

- a. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State in preparing language updates to the State Plan, Provider Manual or other media reflecting changes and updates to the payment methodologies the State is currently utilizing, which include IPPS, OPPI, RBRVS, FQHCs/RHCs, DMEPOS, DSH and GME payments.
- b. The Contractor shall quantify the fiscal impact of proposed changes to current payment methodologies for the State's use in its PBR process.

- c. The Contractor shall provide analytic support and reimbursement subject matter expertise to the State with SPA submissions and CMS negotiations during the contract period should the need arise.

11. Education and Information

- a. The Contractor shall work with the Vermont Association of Hospitals and Health Systems (VAHHS), the Medicaid and Exchange Advisory Board, and any other groups designated by the State to discuss and collaborate on inpatient/outpatient hospital rates.
- b. The Contractor shall work with the State's fiscal agent, DXC Technology, in relation to provider relations and system change requirements.
- c. The Contractor shall attend legislative or legislative Oversight Committee meetings or other meetings designed to explain the hospital payment system or address issues raised by this contract.
- d. The Contractor shall work with DVHA and ACO(s) to generate analyses, reports, and educational materials pertaining to attribution and the re-pricing of Medicaid services included in the ACO Total Cost of Care to support the ongoing evolution and implementation of the VMNG program on an ad hoc basis.
- e. The Contractor shall also participate in ACO, provider, and/or other stakeholder meetings to support the work of VMNG program as requested by the State.
- f. The Contractor shall attend meetings with DVHA senior management as needed.

12. Staffing and Reporting Requirements

- a. As requested by the State, the Contractor shall be represented on site to meet with DVHA staff, providers and other State or legislative officials. The State may request additional employees from the Contractor as needed.
- b. The Contractor shall be responsible for preparing reports and documents, as well as providing analytic support and reimbursement subject matter expertise on projects as requested by the State.
- c. The Contractor shall participate in thirty-minute weekly check-in calls with DVHA program staff and ad hoc on-site meetings with DVHA staff, providers and other State or legislative officials to support the work of the VMNG program.
- d. The Contractor shall participate in sixty-minute weekly check-in calls with DVHA program staff as necessary to support the Rate Setting work under the Contract. The frequency of these calls may vary depending on the needs of the State.

III. **Attachment B, Payment Provisions.** The payment provisions are amended by the addition of the following:

**Service Level Agreement:**

- g. Late delivery of the reports set forth in Attachment A will result in a credit to the State to reflect the reduced value of services provided, as follows:
- i. Delivery one (1) to two (2) days after the deadline of each deliverable shall result in a loss of 10% of this payment against all work performed against said deliverable(s).
  - ii. Delivery three (3) to four (4) days after the deadline of each deliverable shall result in a loss of 15% of this payment against all work performed against said deliverable(s).
  - iii. Delivery five (5) or more days after the deadline of each deliverable shall result in a loss of 20% of this payment against all work performed against said deliverable(s).

**Section 6 of Attachment B is amended by the addition of the following Budget Table.**

**Burns & Associates, Inc. Budget**

**For the 1-Year Contract Amendment Period July 1, 2020 - June 30, 2021**

Staffing Category	Project Director	Project Manager	Lead SAS Programmer	SAS Programmer	Consultant	TOTAL
Proposed Staff	M.Podrazik	K.Suter, S.Pawlowski, D.Saxe	C.Weller	J.Eng, A.Pasupulati, R.Sandhaus	D.Barber, B.Smith	
Hourly Rate	\$250.00	\$235.00	\$220.00	\$210.00	\$200.00	
<b>Total Hours</b>	<b>572</b>	<b>1,048</b>	<b>280</b>	<b>852</b>	<b>196</b>	<b>2,948</b>
<b>Total Cost for Labor</b>	<b>\$143,000</b>	<b>\$246,280</b>	<b>\$61,600</b>	<b>\$178,920</b>	<b>\$39,200</b>	<b>\$669,000</b>

**Breakdown of Hours/Labor Costs by Task**

**Pct of Total**

1	Medicaid Rate Setting and Fee Schedules	100	80	0	320	32	<b>532</b>	
	Full IPPS Grouper Rebase	60			80	8		
	OPPS Annual Updates		40		80	8		
	RBRVS Annual Updates	40			80	8		
	DMEPOS Annual Updates		40		80	8		
		\$25,000	\$20,000	\$0	\$67,200	\$6,400	<b>\$118,600</b>	17.7%
2	Other Fee Schedules	12	40	0	60	0	<b>112</b>	
		\$3,000	\$10,000	\$0	\$12,600	\$0	<b>\$25,600</b>	3.8%
3	Update to FQHC/RHC Payment System	8	40	0	16	8	<b>72</b>	
		\$2,000	\$10,000	\$0	\$3,360	\$1,600	<b>\$16,960</b>	2.5%
4	Development and Implementation of Value-based Initiatives	300	720	0	300	112	<b>1432</b>	
		\$75,000	\$180,000	\$0	\$63,000	\$22,400	<b>\$340,400</b>	50.9%

5	Disproportionate Share Hospital Payments	32 \$8,000	0 \$0	0 \$0	0 \$0	8 \$1,600	40 \$9,600	1.4%
6	Graduate Medical Education Review	8 \$2,000	0 \$0	0 \$0	12 \$2,520	0 \$0	20 \$4,520	0.7%
7	VMNG ACO Program Data and Analytics Operations	40 \$10,000	80 \$20,000	280 \$61,600	64 \$13,440	12 \$2,400	476 \$107,440	16.1%
8	Budget Initiatives and Legislative Rate Changes	24 \$6,000	40 \$10,000	0 \$0	40 \$8,400	12 \$2,400	116 \$26,800	4.0%
9	Support Legislative Requests	24 \$6,000	24 \$6,000	0 \$0	40 \$8,400	12 \$2,400	100 \$22,800	3.4%
10	Medicaid PBR, SPA and Other CMS Negotiations	0 \$0	0 \$0	0 \$0	0 \$0	0 \$0	0 \$0	0.0%
11	Education and Information	24 \$6,000	24 \$6,000	0 \$0	0 \$0	0 \$0	48 \$12,000	1.8%
12	Staffing and Reporting Requirements	0 \$0	0 \$0	0 \$0	0 \$0	0 \$0	0 \$0	0.0%

<b>TOTAL COSTS</b>	<b>\$669,000</b>
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**Attachment E, Business Associates Agreement.** Attachment E is hereby deleted in its entirety and replaced by the Attachment E May 21, 2019 attached to this Amendment.

**Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

**Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs).** Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

**Certification Regarding Suspension or Debarment.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

This document consists of 15 pages. Except as modified by this Amendment No. 2, all provisions of the Contract remain in full force and effect.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

STATE OF VERMONT

CONTRACTOR

DEPARTMENT OF VERMONT HEALTH ACCESS

BURNS & ASSOCIATES, INC.

E-SIGNED by Cory Gustafson  
on 2020-05-19 17:21:18 GMT May 19, 2020

E-SIGNED by Mark Podrazik  
on 2020-05-19 16:11:14 GMT May 19, 2020

CORY GUSTAFSON, COMMISSIONER DATE

MARK PODRAZIK, PRESIDENT DATE

NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010  
Phone: 802-241-0239  
Email: [Cory.Gustafson@vermont.gov](mailto:Cory.Gustafson@vermont.gov)

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ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT

SOV CONTRACT BUSINESS ASSOCIATE: BURNS AND ASSOCIATES, INC.

SOV CONTRACT No. 36456 CONTRACT EFFECTIVE DATE: JULY 1, 2018

THIS BUSINESS ASSOCIATE AGREEMENT ("AGREEMENT") IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, OPERATING BY AND THROUGH ITS **DEPARTMENT OF VERMONT HEALTH ACCESS** ("COVERED ENTITY") AND PARTY IDENTIFIED IN THIS AGREEMENT AS CONTRACTOR OR GRANTEE ABOVE ("BUSINESS ASSOCIATE"). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT OR GRANT ("CONTRACT OR GRANT") TO WHICH IT IS ATTACHED.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

**The parties agree as follows:**

1. **Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

"*Agent*" means an Individual acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

"*Breach*" means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

"*Business Associate*" shall have the meaning given for "Business Associate" in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

"*Electronic PHI*" shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

"*Individual*" includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"*Protected Health Information*" ("*PHI*") shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

"*Required by Law*" means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

"*Report*" means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity’s *Electronic PHI*.

## **2. Contact Information for Privacy and Security Officers and Reports.**

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity’s HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <http://humanservices.vermont.gov/policy-legislation/hipaa/hipaa-info-beneficiaries/ahs-hipaa-contacts/>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: [AHS.PrivacyAndSecurity@vermont.gov](mailto:AHS.PrivacyAndSecurity@vermont.gov)

## **3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. **Business Activities.** *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. **Electronic PHI Security Rule Obligations.**

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

- a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;
- b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such Electronic PHI;
- c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic PHI. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;
- d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such report shall be timely made notwithstanding the fact that little information may be known at the time of the report and need only include such information then available;
- e) Following such report, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and
- f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 **Reporting *Unsuccessful Security Incidents.*** *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

**6. Reporting and Documenting Breaches.**

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

**7. Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

**8. Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than 60 calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*, 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*, 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*, and 5)

contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. **Access to PHI.** *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. **Amendment of PHI.** *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. **Accounting of Disclosures.** *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, *Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. *Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Business Associate* is in compliance with this Agreement.

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the

time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

**15. Return/Destruction of PHI.**

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

**16. Penalties.** *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

**17. Training.** *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

**18. Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a “*Business Associate*” of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual's PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing *PHI* may not be sold without Covered Entity's or the affected Individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.